IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6759 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KUNDANBEN K YAGNIK

Versus

ADMINISTRATIVE OFFICER

Appearance:

MR MB GANDHI for Petitioner

MR BP TANNA for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 10/05/2000

CAV JUDGEMENT

The Petitioner Kundanben Keshavlal Yagnik was a trained Primary School Teacher under the Municipal School Board, the respondent, and she retired on 30-11-1989. Before the retirement of the petitioner the Pension Scheme framed by the Government and adopted by the

Municipal Board came into operation. The existing teachers were allowed to exercise their option. The last date has been fixed for exercising the option whether the primary teachers wanted to opt for pension scheme or they want to continue on the earlier CPF Scheme. The petitioner did not opt for pension scheme before her retirement. Immediately before the retirement the petitioner made an application for giving her the benefit of pension scheme, but the pension scheme has not been extended to the petitioner by the Municipal Board. It is also submitted that, lastly the Government by its circular dated 25-1-1991 extended the pension scheme even to the teachers who retired from service after 1-1-1983. It is stated that eventhough the application of the petitioner is pending with the authority, in spite of Circular dated 25--1-1991 the petitioner has not been extended the benefit of the pension scheme. It is also submitted that the amount lying in the Contributory Provident Fund and that of the gratuity has not been yet paid to the petitioner. It is further contended by the petitioner that the Government circular is illegal and unjust because it provides that for sanction of pension scheme the primary teachers are required to refund the employers contribution and also they are to refund the gratuity amount. The petitioner contended that as per condition of service the petitioner is entitled to get the employers contribution and she is also entitled to gratuity under the C.P.F. Scheme and in addition the petitioner is also entitled to the pension scheme. The petitioner therefore prayed that the Government resolution to the extent of directing the teachers to refund the employers contribution and gratuity amount should be quashed and the petitioner should be given the benefit of pension scheme by the respondent.

2. The claim of the petitioner has been resisted by the respondent Municipal Board. In the counter affidavit the Municipal Board contended that the pension scheme adopted by the Board was circulated to the teachers on 1-12-1983 and the circular was brought to the notice of the teachers working under the Board. The petitioner has also signed the circular, and inspite of that the petitioner did not opt for pension scheme. It is further stated by the Board that since the petitioner did not opt for pension scheme before 1-11-1988 and continued in the C.P.F. Scheme and therefore she is not entitled for pension scheme.

3. Thereafter another circular was issued by the Municipal Board on 16-8-1988 allowing the existing employees to opt for pension scheme. But the petitioner

did not opt for pension scheme and she continued in the C.P.F. Scheme. It is contended that since the petitioner did not opt for pension scheme she cannot claim the benefit of pension scheme. It is further contended that because of the pendency of Spl.C.A. No. 1050 of 1990 there has been delay in releasing the retiral benefits under CPF Scheme to the petitioner. However the respondent Board has made it clear that under the CPF scheme the petitioner will get the benefits in accordance with the rules.

4. Mr. Gandhi, learned counsel appearing on behalf of the petitioner argued that the Board has framed the Pension Scheme for the primary teachers of the Municipal Board and according to the Scheme the petitioner is entitled to get the benefit of pension scheme. Learned counsel also submitted that the petitioner continued in the CPF scheme but immediately before her retirement she made an application to the respondent Board to extent her the benefit of pension scheme. It is also submitted by Mr. Gandhi that the provision regarding refund of employer's contribution and the refund of gratuity by the primary teachers for availing the pension scheme is unjust and illegal and should be quashed. Mr. Gandhi also contended that, according to the conditions of service when the petitioner was continued in CPF Scheme, she is entitled to get the employers contribution and other retiral benefits under the CPF Scheme. Mr. Gandhi also argued that since the Board has framed the pension scheme the petitioner is also entitled to get the benefit of the pension scheme. It is therefore contended by Mr. Gandhi that the respondent Board be directed to pay the entire CPF money and gratuity to the petitioner and Board may also be directed to extend the pension benefit under the Pension Scheme to the petitioner.

5. Ms. Kerrawala, learned counsel appearing on behalf of the Municipal Board submitted that the petitioner while in service did not opt for the pension scheme. On the contrary she opted to continue under the CPF scheme. Learned counsel submitted that, according to the Government policy if a primary teacher wants to take the benefit of pension scheme, then he/they will have to discontinue the CPF scheme and will have to refund the employers contribution before availing the pension scheme framed by the Municipal Board. It is contended by Ms. Kerrawala that the petitioner did not opt for pension scheme and since she continued under the CPF Scheme she is not entitled to get the benefit of pension scheme. However she would be paid the contributory P.F. amount if that is lying in the Board and she will also get other

benefits as per the CPF scheme on her retirement from service.

6. It appears that the petitioner after joining her service continued in the CPF scheme. When the option was offered for the last time the petitioner did not opt for pension scheme within the stipulated date by the authority. On the contrary she continued in the CPF scheme. It however appears that the petitioner was given two more chances for opting for pension scheme. Second time also the petitioner did not opt for pension scheme. After the circular of 25-1-1991 the petitioner did not apply for pension scheme by fulfilling the conditions mentioned in the said circular. According to the Circular No. 73 dated 25-1-1991 a retired primary teacher who wants to opt for pension scheme is required to refund the employers contribution together with interest as well as special gratuity amount if any drawn by them and, on such refund the pension scheme would be available to such retired primary teachers. In the instant case the petitioner did not refund the employers contribution with interest. On the contrary she has challenged this provision regarding refund of employers contribution in this writ petition. Therefore it is clear that the petitioner is not willing to refund the employers contribution with interest and special gratuity if any paid to the petitioner. A primary teacher is either entitled to continue in the CPF scheme or may opt for the pension scheme framed by the Municipal Board. The primary teacher is not entitled to get both the benefits and therefore provision for exercising option have been made by the respondent Board. The petitioner opted for CPF scheme and since she did not opt for pension scheme, I do not find any illegality on the part of the respondent Municipal Board in refusing her claim for extension of pension scheme. Since the petitioner voluntarily continued in the CPF scheme when the option was offered to her, it cannot be said that the respondent were not justified in not permitting the petitioner to extend the benefit of pension scheme to her. An employee cannot get both the benefits of CPF scheme and Pension scheme. They are to opt for any one. Since the petitioner continued in the CPF scheme, I am of the view that no illegality has been committed by the respondent Municipal Board in refusing to her any pension under the pension scheme. However if the CPF and special gratuity if any as admissible under the CPF Scheme are not paid to the petitioner, same may be paid immediately to the petitioner with interest at the rate of 12 % per annum, till date of payment.

8. Having regard to the submission of learned counsel of both the parties and after going through the papers and documents as adduced, I am of the view that there is no merit in the present petition, and accordingly it is dismissed. Rule discharged. Interim direction if any earlier given in the matter shall stand vacated. I make no order as to costs.

Dt: 10-5-2000 (P.K. Sarkar, J)
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